BILL NO. S-82-12-35

SPECIAL ORDINANCE NO. S-15-83

AN ORDINANCE approving Sewer Resolution No. 364-82, Group 3, Sewer Repairs for the City of Fort Wayne, with Land Excavating, Inc., in connection with the Board of Public Works.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That a certain Contract dated September 29, 1982, between the City of Fort Wayne, Indiana, by and through its Mayor and the Board of Public Works and Land Excavating, Inc., for:

> the spot repair and/or replacement of three (3) sewer segments as follows: Washington to Berry; Harrison, Main to Pearl; Alley between Harrison and Calhoun, north of Main; as listed in Federal Emergency Management Agency Damage Survey Report Nos. 044894; 044896; and 044895, respectively;

under Board of Public Works Resolution No. 364-82, involving a total cost of Two Hundred Twenty-Seven Thousand Nine Hundred Forty-Three and 65/100 Dollars ($227,943.65), all as more particularly set forth in said Resolution and Contract, and which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved. Two copies of said Contract are on file in the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Paul M. Burns
Councilmember

APPROVED AS TO FORM
AND LEGALITY

Bruce O. Boxberger
Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Burns, seconded by Gia Quinta, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the ~~Council Chambers, City-County Building~~, Fort Wayne, Indiana, on _____, the _____ day of _____, 19___, at _____ o'clock ___.M.,E.S.T.

DATE: 12-28-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Scruggs, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BRADBURY	✓				
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
SCHMIDT	✓				
SCHOMBURG	✓				
SCRUGGS	✓				
STIER	✓				
TALARICO					

DATE: 1-11-83

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) NO. S-15-83 on the 11th day of January, 1983.

ATTEST: (SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Bay A. E. Cook
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of January, 1983, at the hour of 11:30 o'clock A.M.,E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 14th day of January 1983, at the hour of 3 o'clock P.M.,E.S.T.

[signature] Jr.
WIN MOSES, JR. - MAYOR

82-117-17
10/13/82

CONTRACT

THIS CONTRACT, made the 13 day of October, 1982, by and between LAND EXCAVATING, INCORPORATED, hereinafter called the "Contractor" and the CITY OF FORT WAYNE, INDIANA, a municipal corporation, hereinafter called the "Owner", WITNESSETH, that the Contractor and the Owner, for the considerations stated herein, agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor shall perform everything required to be performed and shall provide and furnish all of the labor, materials, necessary tools, equipment and all utility and transportation services required to perform and complete in a workmanlike manner the construction of

RESOLUTION NO. 364-82, GROUP 3 SEWER REPAIRS
DSR NOS. 044894, 044896 and 044895

for the Owner, all in strict accordance with the drawings and specifications, including any and all addenda, prepared by Bonar & Associates, Inc., which drawings and specifications are made a part of this Contract, and in strict compliance with the Contractor's proposal and other contract documents herein mentioned which are a part of this Contract; and the Contractor shall do everything required by this Contract and the other documents constituting a part thereof.

ARTICLE II. THE CONTRACT PRICE. The Owner shall pay to the Contractor for the performance of this Contract, subject to any additions or deductions provided therein, in current funds, the contract price of Two Hundred Twenty-Seven Thousand, Nine Hundred Forty-Three Dollars and Sixty-Five Cents ($227,943.65). Payments are to be made to the Contractor in accordance with and subject to the provisions embodied in the documents made a part of this Contract.

ARTICLE III. COMPONENT PARTS OF THIS CONTRACT. This Contract consists of the following component parts, all of which are as fully a part of this Contract as if herein set out verbatim or, if not attached, as if hereto attached.

1. This Agreement
2. The Contractor's Proposal
3. Advertisement
4. Specifications
   a. General and Supplemental Conditions of the Contract
   b. Instructions to Bidders
   c. Detailed Specifications
   d. FEMA Regulations
   e. EEO Requirements
   f. City Standards & Specifications
5. Drawings
   a. Detailed Drawings

In the event that any provision in any of the above component parts of this Contract conflicts with any provision in any other of the component parts, the provision in the component part first enumerated above shall govern over any

other component part which follows it numerically, except as may be otherwise specifically stated.

ARTICLE IV. GUARANTEE. The Contractor hereby agrees to protect the Owner against imperfections in materials, equipment and workmanship, which may be or which may become apparent during the period of construction or erection, or which may develop within a period of one (1) year subsequent to the date of final acceptance by the Owner; and the Contractor shall, at his own expense, remove and replace in whole or in part any such work, materials, or equipment which may prove defective or unsuitable for the service performed or to be performed and/or which may show unreasonable deterioration within said period, upon the written demand and to the full satisfaction of the Owner.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in three (3) original counterparts the day and year first above written.

(SEAL)

ATTEST: Joy Braun
Secretary
Title

LAND EXCAVATING, INCORPORATED
Contractor

By Jack Braun 7-30-82
President
Title

CITY OF FORT WAYNE, INDIANA
Owner

(SEAL)

ATTEST: Sandra E Kennedy
Clerk
Title

By BOARD OF PUBLIC WORKS

R. J. Snoffer
ASSOCIATE CITY ATTORNEY

Bond No.

RELIANCE INSURANCE COMPANY

HEAD OFFICE, PHILADELPHIA, PENNSYLVANIA

PERFORMANCE BOND

The American Institute of Architects, AIA Document A311, February 1970 Edition.

KNOW ALL MEN BY THESE PRESENTS: that (Here insert full name and address or legal title of Contractor)

LAND EXCAVATING, INC.
PO Box 192
LaOtto, Indiana 46763

as Principal, hereinafter called Contractor, and, RELIANCE INSURANCE COMPANY, a corporation of the State of Pennsylvania, with its Head Office at Philadelphia, Pennsylvania, as Surety, hereinafter called Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner)

BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE,
City-County Building
Fort Wayne, Indiana 46802

as Obligee, hereinafter called Owner, in the amount of Two Hundred Twenty-Seven Thousand Nine Hundred Forty-Three and 65/100---------- Dollars ($ 227,943.65.----), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated September 30, 19 82, entered into a contract with Owner for

Resolution #364-82 Group 3 Sewer Repairs DSR #044894, 044895, 044896

in accordance with Drawings and Specifications prepared by (Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this 30th day of September 19 82

Jay Braun
(Witness)

Grace Mirabocchi
(Witness)

LAND EXCAVATING, INC. (Seal)
(Principal)
BY: Jack Braun, President
(Title)

RELIANCE INSURANCE COMPANY
Walter E. Manske
(Title)
Walter E. Manske, Attorney-In-Fact

Performance Bond
Revised to February, 1970

SB 5715ax (1) Printed in U.S.A.
BDR-2304 ED. 7-71

RELIANCE INSURANCE COMPANY

HEAD OFFICE, PHILADELPHIA, PENNSYLVANIA

LABOR AND MATERIAL PAYMENT BOND

The American Institute of Architects, AIA Document A311, February 1970 Edition.

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that (Here insert full name and address or legal title of Contractor)

LAND EXCAVATING, INC.
PO Box 192
LaOtto, Indiana 46763

as Principal, hereinafter called Principal, and, RELIANCE INSURANCE COMPANY, a corporation of the State of Pennsylvania, with its Head Office at Philadelphia, Pennsylvania, as Surety, hereinafter called Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner) BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE
City-COUNTY BUILDING
Fort Wayne, Indiana 46802

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Two Hundred Twenty-Seven Thousand Nine Hundred Forty-Three and 65/100---------- Dollars ($227,943.65.---),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated September 30, 19 82, entered into a contract with Owner for

Resolution #364-82 Group 3 Sewer Repairs DSR #044894, 044895, 044896

in accordance with Drawings and Specifications prepared by (Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 30th day of September 19 82

LAND EXCAVATING, INC. (Seal)
(Principal)

(Witness)

By
(Title)

RELIANCE INSURANCE COMPANY

Grace S. Murakoots
(Witness)

By Walter E. Manske
Walter E. Manske Attorney-in-fact

Labor and Material Payment Bond
Revised to February, 1970

SB 5715ax (2) Printed in U.S.A.
BDR-2304A – ED. 7-71

BILL NO. S-82-12-35

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS REFERRED AN ORDINANCE approving Sewer Resolution No. 364-82, Group 3, Sewer Repairs for the City of Fort Wayne, with Land Excavating, Inc., in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

SAMUEL J. TALARICO, Vice CHAIRMAN — Samuel J. Talarico

VICTURE L. SCRUGGS, VICE CHAIRMAN — Victure Scruggs

DONALD J. SCHMIDT

MARK E. GiaQUINTA — Mark E. GiaQuinta

PAUL M. BURNS

1-11-83 CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLE

TITLE OF ORDINANCE Sewer Resolution #364-82, Group 3, Sewer Repairs for the City of Fort Wayne

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

S-82-12-35

SYNOPSIS OF ORDINANCE Emergency sewer repairs for the City of Fort Wayne,

Federal Emergency Management Agency Damage Survey Report Numbers

044894 - Washington to Berry

044896 - Harrison - Main to Pearl

04895 - Alley between Harrison & Calhoun, North of Main

The work requires spot repair and/or replacement of three (3) sewer segments.

The contract awarded to

Prior approval received Oct. 26, 1982.

EFFECT OF PASSAGE Repair of flood damage

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $227,943.65

ASSIGNED TO COMMITTEE